

12049/021

February 18, 2004

Sidney Balthasar Unrau
Courtyard at Jamestown
3610 North University Avenue #375
Provo, Utah 846034

VIA FAX (801) 705-8480

Re: Reclamation or Cherry Hill Park Mine.

Dear Mr. Unrau:

I am in receipt of your letter faxed to me February 17, 2004 regarding Dan Powell and the 'workout agreement' for the Cherry Hill Park mine. Your suggested changes to the proposed Agreement for Settlement and Reclamation assumes that there is an agreement between Mr. Powell and the Neilson Construction Company and that the Division is somehow bound by that agreement. I have talked with Mr. Neilson and he has told me that the proposed contract was subject to the approval of the Division. I note that paragraph 7 of the proposal says that a bond is needed that satisfies DOGM and that the agreement is subject to the approval of DOGM.

Without going into all of the problems with Contract and proposed Bond and Reclamation Agreement you put forward in your January 22, 2004 correspondence, I think DOGM has made it clear that a bond is needed, that the contract is not a substitute for bonding, and that the Division does not issue temporary permits. There has not been a response to this information and I have assumed that Mr. Powell is not in a position to post a bond. In addition, Mr. Neilson has informed the Division that there is not 40,000 tons available in stockpiles. We cannot consent to a contract that requires additional mining without a new and bonded permit. A portion of the existing stockpile is needed for backfilling the highwalls. Any agreement must assume that there will not be a sale of more material than is in the stockpiles less the amounts needed for reclamation.

The Division has put in writing to you a proposal with Neilson Construction that would move forward the reclamation of the site within these parameters. It does not involve issuing a mining permit. In substance, the proposal is to process and sell the available stockpiled material, hold a portion of the proceeds to pay for the reclamation, and have the purchaser do reclamation work in exchange and pay the purchaser for the reclamation work out of the escrow as it is done, subject to holding enough of the proceeds in reserve to insure that the reclamation is completed. As an additional guaranty for the disturbance associated with the purchase and to

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further guaranty the agreement a \$5000.00 bond is to be established prior to any sale. In addition, we would require that money received from the sale of the stockpiled material be paid directly to the escrow for the benefit of the Division (less the owner's royalty); i.e., not held by Mr. Powell, or Emery.

This proposal is a way for Mr. Powell to satisfy his obligation under the Board Order to reclaim the site. Mining in the future will depend on the nature of the future proposal and the posting of a bond as part of an approved plan, but does not preclude Mr. Powell from applying under those conditions in the future. If Mr. Dan Powell does not want to enter into such an agreement, we will pursue other options to clean the mine site up at his expense as provided for by the Board's Order. The Division has tried to work with Mr. Dan Powell to allow him to reclaim the site and to preserve what interests he may have in future permitting of the site. However, he does not seem to appreciate that he is not allowed to resume mining without a bond and a permit.

Unless you advise me that Mr. Powell is willing to pursue an agreement along the lines of these requirements we will investigate other alternatives. Mr. Neilson has said that there is a limited amount of time to reach an agreement for the sale of the stockpiled material. At the present time, this is the only asset the Division is aware of that may be available to do the reclamation. We may pursue a sale without Mr. Powell's agreement, if other parties can obtain the permission of the Owner.

Sincerely,



Steven F. Alder
Assistant Attorney General

cc: Wayne Neilson
VIA FAX 435 687-2251

jb
cc: Mary Ann Wright, OGM
~~Steve Alder, AAG~~
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